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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,218	09/28/2001	John David Tucker	KCC-15,529	7138

35844 7590 07/14/2003
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13
EXAMINER
TRAN, THAO T

ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,218

Applicant(s)

TUCKER ET AL.

Examiner

Thao T. Tran

Art Unit

1711

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Notice of References Cited

Application/Control No.

09/967,218

Applicant(s)/Patent Under
Reexamination
TUCKER ET AL.

Examiner

Thao T. Tran

Art Unit

1711

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,804,658	09-1998	Schmidt et al.	525/168
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

DETAILED ACTION

Response to Amendment

1. This is in response to the Amendment filed on May 30, 2003. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.
2. Claims -23 are currently pending in this application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 7, 9-10, 12-13, 15, 17-18, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogale et al. (US Pat. 5,346,756).

Ogale teaches a nonwoven textile material, comprising fibers; each fiber comprising 90-70 % weight of polypropylene and 10-30 % weight of ethylene-propylene copolymer, and optionally a minor amount of a diene (see col. 1, ln. 34-41, ln. 64-68; col. 2, ln. 1-12; Examples 1-8).

Ogale further teaches the textile fiber being formed into spunbond fibers (see col. 12, ln. 47-50), yarn, woven and nonwoven materials (see col. 1, ln. 12-17).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 8, 11, 14, 16, 19, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogale as applied to claims 1, 12, 20, and 22 above.

Ogale is as set forth in claims 1, 12, 20, and 22 above and incorporated herein.

Ogale is silent with respect to the textile fibers being formed into a staple fiber, a knit fabric, and an absorbent article comprising the nonwoven fabric. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have employed Ogale's textile fibers to form staple fibers, knit fabrics, or absorbent articles. This is because Applicants have not disclosed that the products formed by the fibers are critical in the invention; and it has been known within the skill in the art that textile fibers would be used in forming knit fabrics, staple fibers, or absorbent articles; as equally well as forming spunbond fibers, yarns, woven and nonwoven materials, as taught by Ogale.

Response to Arguments

7. Applicant's arguments filed on May 30, 2003 have been fully considered but they are not persuasive.

Throughout the Remarks, Applicants contend that Ogale et al. do not teach the combination of polypropylene blended with any impact modifiers as recited in the presently claimed invention. However, Ogale et al do teach a blend of a propylene polymer material and an olefin polymer material, each polymerized in the presence of Ziegler-Natta catalyst system. The olefin polymer material comprises ethylene, propylene and a diene (see col. 2, ln. 7-10), that is

prepared by polymerization of the monomers in the presence of Ziegler-Natta catalyst system. As evidenced by Schmidt et al. (US Pat. 5,804,658), polymerization of a mixture of ethylene, propylene, and a diene in the presence of Ziegler-Natta catalyst system would result in an EPDM rubber.

With respect to Applicants' arguments that Ogale et al. do not teach any styrenic block copolymers as suitable olefin polymers, it is hereby noted that the claim language includes styrenic block copolymers as alternatives of EPDM. Applicants further allege that the olefin polymers and the catalyst system required in Ogale et al. are different from those in the present invention. Therefore, the resulting material in Ogale et al. would be quite different from the fibers of the present invention. However, the claim language does not include the differences as pointed out by Applicants.

Thus, Ogale et al. teach all the limitations that are recited in the presently claimed invention.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 703-306-5698. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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July 11, 2003



James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700